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REVIEW OF PRIORITY THEMES

Additional information on measures to combat alien-smuggling

Note by the Secretariat

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INTRODUCTION

1. The present note updates the report of the Secretary-General on measures to combat alien-smuggling (A/49/350 and Add.1) and is based on information provided by the Governments of Barbados, Brunei Darussalam, Cuba, France, Germany, Malawi, Nepal, Oman, Spain and Syrian Arab Republic and by the International Organization for Migration, in reply to the note verbale dated 18 November 1994 from the Secretary-General to States, relevant specialized agencies and inter-governmental agencies.

2. The accelerated pace of illegal migration can be viewed as part of a process of globalization that has facilitated the transnational movement of people and that is related to the growth of international trade, foreign investment and advances in transportation and communication. Illegal alien-smuggling activities are becoming ever more threatening to sending, transit or receiving countries, because such activities undermine national systems for orderly immigration. Small-scale smugglers in separate regions are increasingly being replaced by large-scale operations under the control of international organized criminal groups. These groups, apart from smuggling migrants, are also often involved in other criminal activities, including trafficking in arms, drugs, hazardous materials and stolen motor vehicles. They use the same resources and personnel in dealing in a relatively new commodity: illegal aliens. The purpose is not only to bring people into a country illegally, but also to exploit them in underground economies once they are there. By entering the field of international migration, these networks are extending and strengthening their criminal activities in the affected countries.

3. Illegal migration services, including forged documentation, transportation and accommodation, range in price from US$ 500 to US$ 30,000, depending on the destination and other factors. The total volume of trafficking is estimated to generate gross annual earnings of between US$ 5 billion and US$ 7 billion.[1] In return for the fees that they charge, the traffickers offer the migrants forged travel documents and organize safe passage across all borders. Forged or falsified travel documents or authentic travel documents obtained under false pretences are a requirement for most illegal alien-smuggling activities. Such documents are required, for instance:

(a) When applying for a visa;

(b) When obtaining an exit authorization from the country of departure;

(c) For transportation by air or sea carrier;

(d) For the border controls conducted by transit countries;

(e) For entering the country of destination;

(f) In many cases, for deceiving social and migration authorities.

4. International smuggling groups often use documents that have been forged by specialists or that have been supplied by professional document procurers. Some smuggling gangs specialize in obtaining under false pretences authentic visas from diplomatic missions abroad.

5. Gangs of traffickers try to secure for the migrants stays in the countries of destination that are as long as possible. To do that, they diligently analyse the legal systems and policy measures in the transit countries and countries of destination. One of their methods consists in removing all identity documents from the smuggled aliens, in order to delay their return or to make it impossible. Only a small minority of the migrants who are caught hold valid documents. When they enter a country from a safe third

country, smuggled aliens are, in some cases, instructed to destroy all evidence of their movement, in order to reduce their chances of being readmitted to the third country.

6. Illegal smuggling activities are characterized by the brutality and ruthlessness of the traffickers. Safeguarding the human rights of trafficked migrants at all stages of their journey has become a major challenge for the countries concerned. For example, there are cases where trafficked migrants have been abandoned *en route* by traffickers who had taken the migrants' money and travel documents; in certain instances this has resulted in trafficked migrants dying from exposure or being placed at risk on the ocean.[2] The violence of smugglers of aliens is often directed not only against the persons being smuggled, but also against their relatives who have remained in their country of origin. There are cases where criminal organizations force aliens to commit criminal offences, such as drug trafficking, theft, burglary or prostitution, to pay for outstanding passage fees. This can be extremely damaging to the country of destination. The migrants are often exploited after they take up residence in the receiving country and become a source of cheap labour for legal enterprises owned or controlled by criminal networks. For illegal aliens in these circumstances, normal participation in civil society becomes difficult, if not impossible, and they have few rights to the social services and protection available to persons who are legally in the country.[3]

7. Illegal migrants tend to live in fear that their status will be discovered by the authorities. There is evidence that in some countries illegal aliens are being exploited by people posing as immigration lawyers, advisers or experts. Such persons often charge excessive fees but do not complete the procedures to legalize the status of their clients, in some cases reporting the illegal aliens to authorities for deportation. The illegal aliens concerned have little recourse under the law for their lawyers' failure to perform, because they would be deported if they were to complain.[4]

8. The involvement of organized crime in illegal migration and the problems associated with it in the countries of destination also have had negative effects on public perception of legitimate migration and of migrant communities, in some cases generating negative reactions of a xenophobic character, eroding the democratic and pluralistic institutions and values of the receiving countries.

9. Women comprise an especially vulnerable group of smuggled aliens.* On arrival in the country of destination, the majority of them work in the informal sector, where there is often no legal enforcement of standards relating to wages and working conditions.[5] For many such women, sexual violence is part of the trafficking process. Frequently they are forced into prostitution during transit and upon arrival.[2] Usually the victims are poor people who have been lured by false promises of well-paid jobs abroad and have paid a fee for the opportunity. In other cases, they have been sold by their families or have been abducted. Once out of the country, the victims' documents are confiscated by organized criminal groups and the victims themselves are sold to brothel owners and others who force them to work as prostitutes. In order to recover their documents and leave, the victims are obliged to pay a sum of money for their transportation, food, accommodation and medical costs. Given the ever-increasing sums that they owe, most women have difficulty in extricating themselves from this situation. Others find themselves resold and their debts "recalculated" just as they were about to pay them off. Women are trapped into an exploitative situation by threats of violence. Recently, the Economic and Social Commission for Asia and the Pacific noted that the growth of clandestine migration and female labour migration had created special problems for worker protection.[6] It also noted that, where international migration was taking place, it should do so in a regular and supervised manner, not in irregular conditions that involve considerable hardship and exploitation for the individuals concerned.

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*See the report by the Secretary-General on activities of United Nations bodies and institutions with regard to the issue of violence against women and children (E/CN.15/1995/5).

As with other forms of migrant trafficking, estimates of the number of women trafficked for prostitution vary greatly. But the figure could be as high as tens of thousands a year.

10. The pressures that contribute to the problem continue to increase. These include worsening conditions in countries of origin from a variety of causes, including war, intolerance and poverty. Many illegal migrants are seeking employment opportunities. For example, certain booming economies tend to draw foreign labour to small- and medium-scale firms.[6] Some workers come on tourist visas or forged papers or overstay on work permits. Laws to exclude migrants have, in some cases, appeared to fuel a demand for professional smugglers since other legitimate means to migrate in order to achieve improved economic prospects seem barred.

11. The International Conference on Population and Development, held at Cairo from 5 to 13 September 1994, considered, among other things, the issue of undocumented migrants.[7] The General Assembly, in its resolution 49/128, endorsed the Programme of Action of the International Conference on Population and Development, adopted on 13 September 1994. The International Conference recommended, *inter alia*, the following objectives:[7]

(a) To reduce substantially the number of undocumented migrants, while ensuring that those in need of international protection receive it; to prevent the exploitation of undocumented migrants and to ensure that their basic human rights are protected;

(b) To prevent all international trafficking in migrants, especially for the purposes of prostitution. According to the Programme of Action, Governments of both receiving countries and countries of origin should adopt effective sanctions against those who organize undocumented migration, exploit undocumented migrants or engage in trafficking undocumented migrants, especially against those who engage in any form of international trafficking in women, youth and children.

12. In its resolution 49/166, on traffic in women and girls, the General Assembly welcomed the Programme of Action of the International Conference on Population and Development. In the same resolution, the Assembly called upon all Governments to take appropriate measures to prevent the misuse and exploitation by traffickers of economic activities, such as the development of tourism and the export of labour. In addition, the Assembly recommended that the problem of trafficking in women and girl children should be given consideration within the implementation of all relevant international legal instruments.

13. In its resolution 49/165, on violence against women migrant workers, the General Assembly, *inter alia*, expressed grave concern at the plight of women migrant workers who became victims of physical, mental and sexual harassment and abuse. It invited the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders to consider including in its programme of action the subject of the traffic in women and girls, as well as youth.

I. INFORMATION RECEIVED FROM GOVERNMENTS

14. The present section contains information on measures to combat alien-smuggling that was received after the report of the Secretary-General on the subject (A/49/530 and Add.1) had been issued.

A. Barbados

15. In Barbados, there is currently no legislation dealing specifically with alien-smuggling, but provisions of the immigration act give some legal recourse for combating this activity. Section 10 of

the act provides that no person may enter Barbados by sea or air except at a port of entry and that no person arriving in Barbados may disembark without the consent of an immigration officer. The section further provides that the master of a vessel, including an aircraft, must not allow any person on that vessel to disembark without such consent. Contravention of these provisions are all offences under the act. Sections 11 and 12 of the act also place certain duties on persons entering Barbados and masters of vessels arriving in Barbados.

16. The first schedule of the immigration act includes in the definition of prohibited persons (a) those who knowingly or for profit, aid, encourage or procure other persons who are not citizens of Barbados to enter Barbados illegally or (b) those who are stowaways or who seek to enter Barbados illegally.

17. Barbados is a party to the International Convention for the Safety of Life at Sea, 1960,[8] and the International Convention for the Safety of Life at Sea, 1974,[9] referred to in General Assembly resolution 48/102, on prevention of the smuggling of aliens, and the provisions of those conventions have been specifically made applicable by the shipping act of 1994, sections 312-314.

18. Barbados is also a party to the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery,[10] also referred to in General Assembly resolution 48/102. In addition, under the offences against the person act 1994, section 32, it is an offence to wrongfully confine any person. Sections 33 and 34 of that act provide as follows:

> "33. Any person who imports, exports, removes, buys, sells, or disposes of any person as a slave or accepts, receives or detains against his will any person as a slave is guilty of an offence and is liable on conviction on indictment to imprisonment for life.
>
> "34. Any person who unlawfully compels any person to labour against the will of that person is guilty of an offence and is liable on summary conviction to imprisonment for a term of six months."

B. Brunei Darussalam

19. In its effort to combat the smuggling of illegal immigrants into Brunei Darussalam, the Government of that country undertakes the following measures:

(a) The person accused of being an illegal immigrant will be arraigned in a court of law. If that person is found guilty, the court may sentence him or her to a fine, imprisonment or both;

(b) Once the sentence has been served, the immigration department may detain the illegal immigrant to determine his or her nationality and identity for the purposes of repatriation.

20. Brunei Darussalam, through its police force and immigration department, is increasing its efforts to monitor the entrance of illegal immigrants to the country by thorough checks at immigration control posts and other places of entry, the national border and the waterways.

C. Cuba

21. In Cuba, illegal entry into, or departure from, the country, as well as failure to comply with immigration formalities, is treated as a criminal offence since it breaches the migration requirements laid down in legal or administrative provisions. A person who emigrates illegally is deemed to be an alien. Cuban penal legislation, however, does not provide for punishment of alien-smuggling, since this crime does not occur in that country.

D. France

22. France has long endeavoured to combat the illegal smuggling of aliens, as is shown by the order dated 2 November 1945, article 21, which provides that any person who, by means of direct or indirect assistance, facilitates or endeavours to facilitate entry, circulation or unlawful residence of an alien shall be punished by imprisonment for a term of between two months and five years, a fine of between 2,000 and 200,000 French francs, or both.

23. Over the past few years, the effort to combat the smuggling of aliens has become a priority because it forms part of a general policy to control migratory flows and to combat illegal immigration. Consequently, law No. 92-190, dated 26 February 1992, amended the order dated 2 November 1945 and inserted article 20 *bis*, relating to the liability of carriers. Since this amendment came into force, an air, sea or land carrier may be punished by a fine of 10,000 French francs if it disembarks on French territory a foreign national from outside the European Community who does not possess the required travel documents. These penalties are administrative, rather than criminal, in contrast to the provisions of the order dated 2 November 1945, article 21.

24. Designed to bring domestic legislation into line with the requirements of the convention applying the Schengen agreement of 14 June 1985* between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic, on the gradual abolition of checks at their common borders,[11] article 26, is one of the compensatory measures adopted by the signatories to improve the effectiveness of the control of migratory flows in an area without internal border controls. It also supplements the provision which, by virtue of the order dated 7 November 1945, article 35 *ter*, obliges carriers to carry onward an alien who has been refused entry into France or an alien whose travel has been interrupted, and to bear the related costs.

25. The establishment of carriers' liability was designed to encourage them to be more stringent in checking the travel documents of their passengers, and not to neglect, by reason of their commercial interests, their duties in the prevention of attempts at alien immigration. In this respect, the airlines have, for example, undertaken training in the detection of false documents. Some foreign companies have also received detailed instructions to ensure that they do not take aliens with falsified documents on board.

26. For humanitarian reasons, there are some exceptions to this provision for asylum seekers. The carrier is not punished for carrying an asylum seeker, even if the individual concerned does not have

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*On 19 June 1990, the parties to the agre[illegible]nt between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of controls at the common frontiers (the Schengen agreement)[11] concluded the convention applying the Schengen agreement, which contained a number of implementing provisions on the abolition of international border identification checks. Related matters were also addressed, such as the treatment of immigrants and the harmonization of policies, cooperation between police forces and adoption of uniform rules on trafficking in firearms and drugs. Accession to the Schengen agreement and to the convention applying the Schengen agreement is reserved solely for member States of the European Community. The following States have in the meantime joined the Schengen group: Greece (6 November 1992), Italy (27 November 1990), Portugal (25 June 1991) and Spain (25 June 1991). Austria was granted observer status in the Schengen group in June 1994 and a request from Denmark for similar status is being examined. Border controls between Belgium, France, Germany, Luxembourg, Netherlands, Portugal and Spain were abolished on 26 March 1995.[12] The convention applying the Schengen agreement is generally regarded as a predecessor to the relaxation of border and customs regulations within the European Community.

the necessary documents. This exception does not apply, however, when the request for asylum is evidently unfounded, even without an in-depth examination.

27. Furthermore, a fine is not applied if the air or sea carrier is able to establish that the required documents were submitted at the time of embarkation. A land carrier that has been unable to verify the travel documents of a passenger using its services from a State that is not a signatory of the Schengen agreement is not required to pay a fine if it can show that a check was made on entry into the territory of one of the States parties to the Schengen agreement or, failing this, that a check was made on entry into French territory by the competent services.

E. Germany

28. In general, the illegal smuggling of aliens into Germany has three stages:

(a) The smugglers recruit persons who are leaving their home country by promising them a better life, offering to take them to Germany in return for the payment of a large sum of money, which can be up to 40,000 deutsche mark in some cases. Most of the victims are nationals of countries in Africa, Asia and central and eastern Europe;

(b) The traffickers take the aliens to the country of destination in contravention of immigration requirements and with recourse to violence if necessary;

(c) Often the smugglers continue to control the aliens after arrival in the country of destination by criminally exploiting their position of servitude or indentured labour. This is possible because the illegal migrants often cannot pay the extortionate passage fees, or they are forced into committing illegal acts and are then blackmailed by the smugglers.

29. According to the intelligence gathered by the German border police, the smuggling of more than 60 per cent of the aliens entering Germany unlawfully, mainly from or via central and eastern Europe, has been undertaken by groups of smugglers operating internationally. In 1993, 2,427 persons were arrested for the smuggling of aliens. That figure was almost 2.5 times greater than the figure for 1992. About 95 per cent of those arrested were from countries other than Germany. Furthermore, according to the German Government, a nationwide analysis of 603 cases of organized crime showed that as many as 1,425 individual offences were connected to alien-smuggling.

30. The efforts of individual States are insufficient to effectively prevent alien-smuggling. There should be concerted action at the regional and international levels. Following the political changes in eastern Europe brought about by the end of the cold war, this important prerequisite has been largely fulfilled. The Government of Germany has pursued a policy of cooperation with other States, based on mutual trust. It brought together the States of Europe when it acted as host to the Ministerial Conference on Measures for Checking Illegal Immigration from and through Central and Eastern Europe, held at Berlin from 30 to 31 October 1991. The German strategy is to undercut the smugglers' efforts in all phases of smuggling. To this end it is necessary:

(a) To make it as difficult as possible to recruit would-be migrants in their countries of origin;

(b) To prevent the would-be victims from being introduced into the country of destination;

(c) If the above aims are not achieved, to work against the exploitation of immigrants by traffickers in Germany, including exploitation through forced labour and criminality;

(d) To arrest and prosecute the smugglers.

31. As a priority, Germany intends to pursue a policy of prevention. It is essential that people living in areas of crisis worldwide should not believe that their only hope for a life with dignity is to leave their homes on the fraudulent advice of smugglers. If people in the countries of origin were better informed about the real living conditions in countries in Europe and in other countries, many more would resist the empty promises of the traffickers. The Government of Germany is working towards the aim of encouraging people to stay in the familiar surroundings of their country of origin within the framework of its refugee concept* of September 1990, by return assistance programmes that have time-limits and are, as a first stage, limited to Bulgaria, Romania and Poland. Another means to discourage illegal migration would be the use of education programmes to inform the general public in the countries of origin about the real entry and residence requirements and about the living conditions in the countries of destination. Apart from these preventive measures, special administrative control measures are required.

32. Together with the other Schengen contracting States, Germany has imposed visa requirements on nationals of 127 States considered most likely to pose an emigration risk and has adopted strict visa issuance provisions which, after the convention applying the Schengen agreement has taken effect, are intended to ensure that fewer visas are obtained under false pretenses.

33. The visa filter has, however, lost a great deal of its importance now that smugglers are increasingly using forged visas. This will be counteracted by using the tamper-proof Schengen visa mark and by employing more sophisticated means of identification.

34. Pursuant to international rules (the Convention on International Civil Aviation[13] and the Convention on the Facilitation of International Maritime Traffic[14]) and to the alien act, section 74, carriers may only transport passengers to the federal territory who possess the documents required by law. If carriers violate these obligations, they may be ordered to refrain from doing so. If they disregard such an order, they will be heavily fined. Recently, authorities have started to apply section 74 to ferry operators from Denmark, Finland, Norway and Sweden.

35. These provisions and measures have forced the smugglers of aliens to change their routes. They now book flights to neighbouring States that have not yet taken any systematic action against transport carriers acting unlawfully. The human traffickers exploit such weak points and smuggle migrants from those places into the countries of destination across land borders. This is an example of how national efforts can be frustrated if they are not accompanied by suitable international measures. For this reason, the Government of Germany is striving:

(a) To encourage all the States of central and eastern Europe to join the control authority working group within the International Air Transport Association, so that they may participate in the international cooperation regarding the prevention of illegal entries by air;

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*In September 1990, the German Government issued a political memorandum of intention dealing with the increase in illegal immigration to Germany. This memorandum called the refugee concept, proposed that any political or legal measures must consist of two components: (a) the revision of the German alien act; and (b) the amendment of the German Constitution regarding the right of political asylum. Subsequently, in 1993, certain sections of the alien act were amended, as was a section in the Constitution (see S. Blay and A. Zimmerman, "Recent changes in German refugee law", *American Journal of International Law*, vol. 88, April 1994, pp. 361-370).

(b) To have an international maritime traffic body set up that would be comparable to the control authority working group.

36. When smuggled persons reach German borders, they meet another level of migration control, one that has been considerably strengthened over the last two years by additional staffing, the employment of the latest detection technology, the introduction of new tactical procedures and an improvement of asylum provisions. Though such measures can be expected to lead to a drastic decrease in alien-smuggling activities in the long run, a border control area as large as the one between Germany and its eastern neighbours cannot completely absorb the migratory and smuggling pressure. Controls at the eastern borders of the transit States in central Europe should intercept a considerable number of illegal migrants approaching by land. To this end, local control systems should be brought up to the standards of the Schengen agreement. The Ministerial Conference held at Berlin in October 1991 and the Intergovernmental Conference to Prevent and Control Migration, held at Budapest from 15 to 16 February 1993, adopted recommendations that should urgently be implemented. Furthermore, the Czech Republic, Germany and Poland have agreed on a security partnership under the umbrella of which there is wide-ranging communication from the local level to the central level. The core elements are agreements on cooperation in combating organized crime, which are to be supplemented by further agreements on cooperation between police and border authorities in border areas.

37. If, in spite of all the Government's efforts, smuggled aliens succeed in entering German territory, they must be protected from being permanently exploited by organized criminal gangs or from being forced into a life of crime. The legal instruments necessary to do this already exist. For example, unlawfully employing workers, unlawfully hiring out foreign workers not having work permits or recruiting workers from abroad without the authorization of the competent authority are acts subject to heavy penalties. Some problems have been encountered in applying these provisions, however, because of the difficulties involved in detecting offences. Also, in some cases, the illegal aliens leave the country, defeating the smugglers' plans to exploit them. Germany has supported all efforts to establish a return network among States both within and outside Europe, has concluded readmission agreements with a number of Governments following a common model and has made plans to conclude more agreements of that type.

38. Draft anti-crime legislation currently before the German Parliament contains, among other things, a number of provisions concerning alien-smuggling. By allowing the interception of telephone communications, the draft legislation is expected to enable police authorities to find not only small-scale offenders, but also criminals higher up in the chain of command. In order to remove the financial incentives to offend, provisions for the confiscation and forfeiture of the proceeds of crime that already exist in the Act on Combating Organized Crime are also applicable to aggravated forms of alien-smuggling.

39. Regarding the penal provisions applicable to smugglers of aliens, the draft legislation provides a considerable increase in the statutory range of punishment in cases where the offenders have committed serious offences. This is designed to stop alien-smuggling offences from being treated as petty crime and to ensure that such offences are treated with the necessary seriousness.

40. In most central and eastern European countries it has been made a punishable criminal offence to smuggle aliens. In the majority of those countries only smuggling into those countries is penalized, not *involvement in smuggling activities affecting other countries.* This has led to a situation in which the traffickers avoid the countries of destination so that they cannot be arrested and punished there, while they are not liable to prosecution in their countries of residence.

41. On the basis of the convention applying the Schengen agreement, article 27, the German Government intends to conclude agreements with neighbouring countries in eastern Europe, in which it would be agreed that their legal systems would also make it a punishable offence to smuggle aliens into the territory of another contracting partner. Eventually, such arrangements may be extended to the rest of Europe and to other regions.

F. Malawi

42. Malawi reported that no recent measures had been introduced in that country to combat the smuggling of aliens in the context of the broader problem of transnational crime.

G. Nepal

43. In Nepal, the entry and exit of aliens are regulated by the immigration act. No foreign national, whether a tourist, migrant worker, settler or any other person, is permitted to enter the country without completing the prescribed procedure. The act is administered by the Ministry of Home Affairs and is carried out by police at the relevant border checkpoint, the immigration office and border administration office, which are supervised by their respective central departments. All foreigners, except Indian nationals, should have Nepalese visas for their entry and stay in the country. Otherwise, aliens are subject to action under the immigration act.

44. Nepal is not in a position to bear the burden of illegal migrants because of its relatively small size and lack of resources. Accordingly, the Government has been combating alien-smuggling by using legal and administrative measures. Nepal has given shelter to around 100,000 refugees who claimed that they were deprived of the minimum human rights in their countries of origin. Certain other nationals who enter the country illegally are, after a thorough investigation, handled locally by the Office of the United Nations High Commissioner for Refugees (UNHCR). With the assistance of UNHCR, the refugees are then sent to third countries of their choice.

H. Oman

45. Oman adheres to the principle of international cooperation in the face of the problem of smuggling of aliens by criminal organizations.

46. Infiltration and smuggling across international borders have become disturbing problems for many countries, particularly in view of the increasing number of aliens entering countries illegally. They also create secondary economic, social and political problems and may lead to security problems. Many of the individuals involved attempt to prove that they are citizens of the country that they have infiltrated and apply for passports of that country, which they use in an attempt to obtain the rights and privileges of genuine citizens of that country.

47. The policy of Oman is not to accept any person or group smuggled into the country, for whatever reason. Persons who enter Oman illegally are considered to have committed a crime punishable under the law, and appropriate legal proceedings are taken against them. The attitude of the Government towards the problem of illegal migrants is based upon the need to take firm action and to return them to their countries of origin.

48. In order to curb this problem, Oman has taken the following measures:

(a) Illegal aliens are detained in isolation in temporary camps with security arrangements and are provided with means of sustenance, such as food, electricity, water and medical services;

(b) Certain precautionary measures are taken to avert the occurrence of riots or the occupation of premises where this is considered to be a possibility;

(c) Measures to counter infiltration by further groups are taken, such as intensification of sea and land patrols at locations that could be used for infiltration;

(d) Coordination and cooperation with the relevant security forces and appropriate agencies of neighbouring countries, and the exchange of information and experiences with them;

(e) Coordination is undertaken with the embassies of the countries of origin of illegal aliens, as well as with UNHCR, to secure their deportation;

(f) Legal action is taken against some infiltrators for breach of the laws governing the entry of foreigners into Oman.

I. Spain

49. Spain reported that under the draft penal code amendment bill, articles 286 and 287, illegal trafficking in workers and the clandestine immigration of workers would be considered offences, with the penalties of imprisonment for a term of between one and three years; similar penalties would be imposed on any person who promotes or assists the clandestine immigration of workers into Spain and on any person who, feigning the existence of an employment contract or position, or using any similar deception, causes or promotes the emigration of any person to another country.

50. In addition, offences and corresponding sanctions in the area of aliens have been regulated by law 7/1985 of 1 July 1985, concerning the rights and freedoms of aliens in Spain, and the relevant regulations. Article 25, paragraph 3, of that law provides that acts and omissions of persons or entities promoting, intermediating in or protecting the legal situation of aliens in that country or facilitating non-compliance with any of the obligations of aliens laid down in the provisions in force shall also be considered offences under that law.

51. The Ministry of Justice and Internal Affairs can impose fines of up to 2 million pesetas, the amount being determined by the capacity of the offenders to pay, their degree of deliberate intent, and any reoffending. In certain cases, the sanction consists of expelling the aliens without a fine (article 27).

52. Law 8/1988 of 7 April 1988 provides for offences of a social nature including serious offences such as entrepreneurs using foreign workers without work permits, and individuals or bodies corporate promoting, mediating in or abetting the employment of aliens in Spain without work permits.

53. An amendment to the penal code, introducing article 499 *bis*, specifically provides for the punishment of those who engage in alien-smuggling.

54. A new asylum law has been introduced with the dual purpose of closing the loopholes in the old law and bringing Spanish legislation into line with that of other countries of the European Community and adapting it to the convention applying the Schengen agreement.

55. In addition to the above-mentioned legislation, the following administrative measures have been adopted in Spain:

(a) New administrative measures have been established, and the existing organs restructured, which deal with matters relating to aliens and border control, as well as the control of illegal

immigration. Examples include the creation, by royal decree 2322/1993 dated 29 December 1993, of the General Directorate for Aliens and Asylum (currently the General Directorate for Electoral Matters, Aliens and Asylum) in the Ministry of Internal Affairs;

(b) The General Documentation Commissariat, which is the part of the General Directorate of Police responsible for controlling illegal immigration, has been restructured to enable it to deal more effectively with the increasing immigration problems in Spain, for example by establishing a central border control service in the General Documentation Commissariat;

(c) A growing number of police officers, at the executive and basic levels, are participating in specialized courses on border control and aliens, to make them better prepared and trained to cope with the problems of illegal immigration;

(d) Spain is involved in various international bodies concerned with these matters, such as the European Community, the Schengen Group and the Budapest Group (established by the Intergovernmental Conference held at Budapest in February 1993), the idea being that, in order to solve the problems generated by illegal immigration, it is necessary to act in coordination with other countries that are the source or origin of illegal immigration or that have similar problems;

(e) Operational groups are being established or strengthened within central authorities for coordinating and implementing measures to combat the focal points in the organized criminal groups that are responsible for facilitating illegal immigration.

J. Syrian Arab Republic

56. The Syrian Arab Republic reported that no illegal immigration had been recorded in that country. The Syrian Arab Republic is a party to the slavery and forced labour convention. Its domestic law allows entry into the country and departure for foreign countries only to persons with valid passports and entry visas in order to prevent its territory, sea or air space from being used for illegal migration.

57. Decree No. 29 of 15 January 1970 and other regulatory decisions regulate aliens' entry into and departure from the Syrian Arab Republic through specified locations and by means of passports. The captains of ships and aeroplanes are advised that upon arriving in and departing from the country, they should submit lists showing the names of their passengers, as well as special statements concerning those who do not possess passports.

58. It is the duty of border authorities to ascertain whether the legal requirements for entry into and departure from the territories of the Syrian Arab Republic have been complied with. The laws and regulations in force in the country prevent the smuggling of aliens. The Government reported that it was prepared to study any request for assistance in this field, whether by means of bilateral, regional or international agreements, and to exchange any information in this regard.

59. When considering what measures are necessary to deal with and prevent illegal migration, the Government stated that the disparity of incomes between developing and developed countries should be taken into account. The provision of effective assistance to promote the economies of developing countries was considered to be one of the most important means to deal with illegal migration to developed countries. Furthermore, territorial conflicts have also contributed to the departure and emigration of the inhabitants of certain territories, often illegally, in order to escape. These two factors should be taken into account in order to take action to avoid their consequences.

II. INFORMATION RECEIVED FROM INTERGOVERNMENTAL ORGANIZATIONS

60. The present section contains information on measures to combat alien-smuggling that was received after the report of the Secretary-General on the subject (A/49/530 and Add.1) had been issued.

International Organization for Migration

61. The International Organization for Migration reported a range of activities relating to migration, including illegal migration. It had organized a seminar entitled "International Response to Trafficking in Migrants and the Safeguarding of Migrant Rights".[15] The seminar provided a forum for countries of origin and destination and transit countries to discuss and better understand the nature of migrant trafficking, the vulnerability of the migrants involved and the diverse national practices currently in place to combat migrant trafficking and to protect migrants. The seminar was a response to General Assembly resolution 48/102, in which the Assembly requested the International Organization for Migration and other intergovernmental organizations to consider ways and means of enhancing international cooperation to combat the smuggling of aliens.

62. At the seminar, the International Organization for Migration presented a working definition of trafficking in migrants. It was argued that such trafficking had four elements: it required a trafficker or intermediary to facilitate the migration; it involved payment to the trafficker by the migrant or on his behalf; the migration itself was illegal and had to be supported by various illegal acts; and the migrant who was party to the transaction was making a voluntary choice. It was mentioned that there were different types of these activities with different dimensions to them, ranging from small-scale to large-scale operations that controlled transnational networks and provided documentation, transportation, provision of assistance in crossing, safe places for transit, residence in receiving countries and illegal employment.

63. It was noted at the seminar that while there had been a number of conferences on the illegal trafficking in aliens, mechanisms for sustained and effective coordination and international cooperation to deal with the emerging problems were not firmly in place. There was a need to harmonize national policies and to coordinate control systems. National systems, no matter how thorough their coverage, would have only limited effectiveness if they were not accompanied by international cooperation.

64. It was stated that wide differences existed among the legal systems of countries, including the penalties imposed, the detention of illegal migrants, procedures of migration, standardization of documentation and procedures relating to passports and visas. In some cases, traffickers conducted their operations from third countries, where they were safe from prosecution. Some countries had progressed further than others in building national capabilities to deal with illegal migration, and there was much that countries could learn from each other. A system for the collection and ready exchange of information among countries was a crucial factor in an effective strategy for the control and prevention of trafficking.

65. There was consensus at the seminar that the task of highest priority was to combat the internationally organized criminal networks engaged in trafficking in migrants as well as other illicit activities. Technical assistance was considered important for the improvement of legal systems, documentation relating to passports and visas, methods of control and prevention, and systems for information and data collection.

66. One means to prevent trafficking in migrants that was recommended by the seminar was the dissemination of information in the sending countries about the real situation in receiving countries, including the laws, procedures and existing situation relating to migration, the hazards and exploitation

to which migrants were exposed in the process of illegal entry and trafficking, and the special risks associated with the organized criminal groups undertaking the operations. Such programmes of education required international cooperation to facilitate the exchange of information.

67. In order to protect the human rights of illegal aliens, it was recommended that laws and procedures should be evaluated by Governments in terms of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (General Assembly resolution 45/158, annex). That approach should be combined with the strengthening of the law, intelligence systems, enforcement of laws, and judicial capacities to dismantle the trafficking networks.

68. In dealing with the more deep-seated causes of migration, there was considered to be a need to incorporate the issues concerning migration into the international policies and programmes relating to trade, foreign investment and development cooperation.[16]

Notes

[1]See International Organization for Migration, "Seminar on 'International Response to Trafficking in Migrants and the Safeguarding of Migrant Rights': summary report by the Rapporteur and proposed follow-up action" (MC/1827), Geneva, 26-28 October 1994, para. 30.

[2]"Trafficking in migrants", *Quarterly Bulletin of the International Organization for Migration*, No. 4, September 1994.

[3]"Off to work", *Newsweek*, 17 October 1994, p. 41.

[4]"Immigration: difficult times", *West Africa*, 23-29 May 1994, p. 911.

[5]See *Report of the International Conference on Population and Development, Cairo, 5-13 September 1994* (A/CONF.171/13), annex, para. 4.9. The report will be issued subsequently as a sales publication of the United Nations.

[6]*Inter Press Service Daily Journal*, vol. 2, No. 199 (20 October 1994), pp. 1-2.

[7]See *Report of the International Conference on Population and Development, Cairo, 5-13 September 1994* (A/CONF.171/13), annex, paras. 10.15-10.20. The report will be issued subsequently as a sales publication of the United Nations.

[8]United Nations, *Treaty Series*, vol. 536, No. 7794.

[9]Ibid., vol. 1184, No. 18961.

[10]Ibid., vol. 266, No. 3822.

[11]*International Legal Materials*, vol. XXX, No. 1 (January 1991).

[12]European Commission, "Information paper on the implementation of the convention applying the Schengen agreement" (XV/A-3), 16 March 1995.

[13]United Nations, *Treaty Series*, vol. 740, No. 10612.

[14]Ibid., vol. 591, No. 8564.

[15]See International Organization for Migration, "Seminar on 'International Response to Trafficking in Migrants and the Safeguarding of Migrant Rights': summary report by the Rapporteur and proposed follow-up action" (MC/1827), Geneva, 26-28 October 1994.

[16]See *Report of the International Conference on Population and Development, Cairo, 5-13 September 1994* (A/CONF.171/13), annex. The report will be issued subsequently as a sales publication of the United Nations.